**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CRIMINAL APPELLATE JURISDICTION**
**CRIMINAL APPLICATION NO.3603 OF 2005**

Bashir Yusuf Vasta ...Applicant
vs.
The State of Maharashtra ...Respondent

Mr.S.B.Shetye for the Applicant
Mr.R.Y.Mirza,A.P.P. for State

**CORAM: A.S.OKA,J.**
**DATE : JULY 7,2005.**

**P.C.:**

1. Heard Advocate appearing for the Applicant and the learned A.P.P. for State. The Applicant has allegedly committed an offence under Sections 302, 323, 506, 504 of the Indian Penal Code. The victim is the wife of the Applicant. The case of the prosecution is that on 28th December 2004 at about 2.00 p.m. the Applicant came to his house and at that time he had consumed liquor. There was an altercation between the Applicant and the deceased and he poured kerosene on the person of the deceased and lighted a match. As a result of fire, the deceased sustained 60% burn injuries all over her body. The case of the prosecution is that she was admitted to the Civil Hospital at Ratnagiri at 2.45 p.m. The Special Executive Magistrate, Ratnagiri recorded a dying declaration between 6.20 p.m. to 6.30 p.m. At about 9.00 p.m., F.I.R. was recorded by the deceased. The deceased expired on 4th January 2005 in the Civil Hospital. The cause of death is

Septicaemia due to 55% superficial to deep burns.

2. The learned Sessions Judge rejected the application for bail by order dated 7th May 2005. When the application was heard, charge sheet was already filed. When I found that the learned Judge has referred to the dying declaration, it was brought to my notice that the dying declaration was not produced along with the charge sheet and it was in the custody of the Special Executive Magistrate, Ratnagiri. The learned A.P.P. brought to my notice that even on the request made by the Investigating Officer to the Special Executive Magistrate for making a copy of the said dying declaration available for perusal of the learned A.P.P., the Special Executive Magistrate declined to give a copy. Therefore, by order dated 22nd June 2005 I directed the Special Executive Magistrate to submit the original dying declaration in this Court. On 30th June 2005 Shri A.Y.Tambe, a representative of the Special Executive Magistrate produced the original dying declaration in this Court which was kept in a sealed envelope. The sealed envelope was opened in presence of the Advocate for the Applicant and the learned A.P.P. By order dated 30th June 2005 the Advocate for the Applicant and the learned A.P.P. were permitted to take Xerox copies of the dying declaration and the said dying declaration was ordered to be returned to the said representative of the Executive Magistrate, Ratnagiri. The Court Sheristedar informed me that the said representative left the Court without collecting the original dying declaration though the order directing the return the original dying declaration to the said representative was

passed in his presence and therefore, I am informed that the original dying declaration is kept in a sealed envelope in the custody of Registrar (Judicial) of this Court.

3. The learned Counsel for the Applicant has taken me through the various documents which are produced along with the charge sheet. He has pointed out to me number of discrepancies in the case of the prosecution and he submitted that as the investigation is completed, the Applicant deserves to be enlarged on bail. He stated that till the conclusion of the trial the Applicant will not enter the area falling within the jurisdiction of Ratnagiri City Police Station except for attending the dates fixed in the trial.

4. The learned A.P.P. pointed out that the dying declaration as well as the F.I.R. recorded by the deceased on the same day disclosed the consistent story that her husband i.e. the Applicant poured kerosene on her person as a result of which she sustained burn injuries. He pointed out that even in the dying declaration a reference is made to the dispute between the Applicant and the his wife.

5. I have considered the rival submissions. In the dying declaration allegedly recorded by the special Executive Magistrate there appears to be over writing in the time mentioned therein at which recording of the statement was commenced. The dying declaration purports to state that

recording of the same was started at 6.20 p.m. In the figure 20 obviously there is an over writing. The certificate of Doctor below the said declaration records that the same is written at 6.15 p.m. Intimation given by the Police Constable to the Special Executive Magistrate requesting him to record the dying declaration, appears to have been received in the office of the Special Executive Magistrate at 6.10 p.m. The case papers of Civil Hospital show that there is an entry made therein under the signature of the Special Executive magistrate that the declaration was recorded between 18.00 to 18.30. It is pertinent to note that the prosecution has recorded a statement of one Rajendra Jaywant Bhosale, the Police Constable who was on duty in the Civil Hospital Police Chouwky on 28th December 2004 between 1.00 p.m. to 9.00 p.m. The said statement is recorded on 12th February 2005 in which he has stated that he handed over the request letter to the Special Executive Magistrate for the purpose of recording dying declaration. It is pertinent to note that the F.I.R. is registered on the basis of statement of the deceased which is purported to have been recorded at 9.00 p.m. on the same day. The case papers of the Civil Hospital disclose that the deceased was admitted on 28th December 2004 at 2.45 in the afternoon and the Doctor has noted on the case paper that the deceased was conscious and oriented. Only one typewritten statement is of the mother of the deceased which is recorded on 29th December 2004. The said statement discloses that the deceased disclosed to her on 28th December 2004 regarding the

overt act on the part of the Applicant after she regained full consciousness. F.I.R. which is recorded by the deceased shows that according to the deceased she lost her consciousness and she regained the consciousness after treatment was started in the Civil Hospital. The prosecution case is that the neighbour of the deceased one Nasarat extinguished the fire and he along with the Applicant admitted the deceased to the Civil Hospital. Surprisingly, his statement is recorded on 27th January 2005 i.e. one month after the date of incident. In the statement he has stated that after the treatment was given to her in the hospital, she regained full consciousness. The case paper shows that at 2.45 p.m. she was fully conscious and at 6.00 p.m. she was fully conscious and even at 9.00 p.m. when F.I.R. was recorded she was conscious. There is a gross delay in recording the statement of important witness Nasarat. The statement of the mother and witness Nasarat as well as the F.I.R. shows that the deceased had lost consciousness. this is contrary to the case papers of the Civil Hospital. Prima facie it appears to me that the aforesaid circumstances did not support the prosecution case. The Applicant has been arrested on 28th December 2004. Thus, he is in custody for last more than six months. The Applicant has offered to stay away from the area falling within the jurisdiction of the concerned Police Station. As the aforesaid factors prima facie make the prosecution case vulnerable, the Applicant is entitled to be enlarged on bail subject to the stringent

conditions.

6. Hence I pass the following order :

i) The Applicant shall be enlarged on bail in connection with C.R.No.195 of 2004 registered with Ratnagiri City Police Station, subject to furnishing a personal bond of Rs.20,000/- (Rupees twenty thousand only) with one or two local sureties in the like amount.

ii) The bail is granted subject to condition that the Applicant shall not enter the area falling within the jurisdiction of Ratnagiri City Police Station till the conclusion of the trial save and except for attending the court on the dates fixed in the matter.

iii) The Bail is granted subject to condition that the Applicant shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with prosecution evidence.

iv) The Applicant shall cooperate with the learned Trial Judge for expeditious disposal of the trial. Any attempt by the Applicant to delay the trial may be a ground for cancellation of bail.

v) Any observation made in this order shall not be construed

as any finding or any expression of opinion on the merits of the case at the time of trial.

vi) Application is disposed of in above terms.

vii) The parties to act upon an authenticated copy of this order.

. The Registrar (Judicial) is directed to forward the original dying declaration of the deceased in a sealed envelope to the Chief Judicial Magistrate, Ratnagiri.

**JUDGE**